

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

SCOTT WEAVER, individually and on
behalf of all others similarly situated,

PLAINTIFF,

v.

**CHAMPION PETFOODS USA, INC. and
CHAMPION PETFOODS LP,**

DEFENDANTS.

Case No. 2:18-cv-01996-JPS

**PLAINTIFF’S MOTION FOR ORAL ARGUMENT AND LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO SUMMARY JUDGMENT**

Plaintiff Scott Weaver, by and through counsel, respectfully moves this Honorable Court for oral argument on the pending motion for summary judgment and class certification and also permission to file limited supplemental briefing in support of his opposition to summary judgment on the issue of damages. Plaintiff’s counsel conferred with Defense counsel and Defendants oppose this motion.

On November 27, 2019, Plaintiff’s counsel was informed by the Court of its intention to exclude Dr. Krosnick under *Daubert*. This ruling is directly tied to a majority of the bases raised in Defendants’ pending motion for summary judgment and opposition to class certification. As such, Plaintiff requests the opportunity to address at oral argument how exclusion of Dr. Krosnick should not result in summary judgment or denial of class certification. It is within the Court’s discretion to hold oral argument on any motion and Plaintiff respectfully requests the Court exercise its discretion here.

Plaintiff also requests permission to file a five (5) page supplemental memorandum in opposition to summary judgment based on the exclusion on Dr. Krosnick. Under Wisconsin law, expert testimony is not required to prove damages under Plaintiff’s statutory claim or intentional

misrepresentation claim as a full refund and rescission are available. *Mueller v. Harry Kaufmann Motorcars, Inc.*, 2015 WI App 8, ¶ 30, 359 Wis. 2d 597, 616, 859 N.W.2d 451, 460; *see also Murillo v. Kohl's Corp.*, 197 F. Supp. 3d 1119, 1133 (E.D. Wis. 2016). The current briefing before the Court does not address this argument as the motion solely focused on the damages model provided by Dr. Krosnick.

Dated: December 3, 2019

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